

(Without Reference to File)

SENATE THIRD READING

SB 4 X5 (Romero)

As Amended January 4, 2010

Majority vote

SENATE VOTE: 21-7

EDUCATION	11-4	APPROPRIATIONS	11-4
Ayes:	Nestande, Arambula, Huffman, Hill, Gaines, Garrick, Hall, Logue, Miller, John A. Perez, Solorio	Ayes:	Conway, Charles Calderon, Coto, Hall, Harkey, Miller, Nielsen, John A. Perez, Skinner, Solorio, Audra Strickland
Nays:	Brownley, Ammiano, Chesbro, Torlakson	Nays:	De Leon, Ammiano, Fuentes, Torlakson

SUMMARY: Establishes an Open Enrollment Program, which authorizes a pupil enrolled in a low achieving school, as defined, to attend any higher achieving school in the state; and establishes a Parent Empowerment Program that authorizes parents of specified schools to sign a petition requiring a local educational agency (LEA) to implement a school intervention model, as specified. Specifically, this bill:

- 1) Establishes the Open Enrollment Act to allow any pupil enrolled in one of 1000 schools identified by the Superintendent of Public Instruction (SPI) to enroll in a higher performing school anywhere in the state with the following provisions:
  - a) Requires the SPI to annually rank schools based on academic performance index (API) and identify the lowest achieving 1,000 schools, making the following exclusions from the list: county community schools, community day schools, juvenile court schools, charter schools, any school that would make a school district have more than 10% of its schools in the program, and any school that would disrupt the balance of elementary, middle and high schools ranked in decile one based on the API in the 2008-09 school year, as specified;
  - b) Requires the district of residence to provide notice of the option to transfer to parents and guardians of students enrolled in these schools no later than the first day of the school year;
  - c) Authorizes either a district of residence or district of enrollment to limit the number of students transferring if it would negatively impact a voluntary desegregation plan;
  - d) Requires districts of enrollment to ensure that communications to parents do not target individual families or neighborhoods;

- e) Authorizes a school district of enrollment to adopt written standards for acceptance and rejection of applications, including consideration of adverse financial impact pupil transfers may have on a school district;
  - f) Specifies that no exercise of discretion by a district of enrollment shall be overturned absent a finding as designated by a court of competent jurisdiction that the district governing board acted in an arbitrary and capricious manner;
  - g) Requires that the standards adopted by the district of enrollment for accepting or rejecting student transfers not include consideration of a pupil's family income, or any of the individual characteristics set forth in Education Code Section 200, and encourages districts to keep records on the personal characteristics of students that transfer under this program;
  - h) Specifies that districts of enrollment that are basic aid districts shall receive 70% of the district revenue limit that would have gone to the district of residence for the average daily attendance, commencing in the second consecutive year of enrollment; and,
  - i) Requires the SPI to contract for an independent evaluation of the program, and requires that the SPI provide the final report of the evaluation to the Legislature, Governor, and state board of education (SBE) on or before October 1, 2014.
- 2) Requires a LEA to implement one of the four interventions for turning around persistently lowest-achieving schools described in the Race to the Top (RTTT) regulations or the Alternative Governance reform described in Section 1116(b)(8)(B)(v) of the federal No Child Left Behind Act of 2001 (NCLB) that is selected by parents for any school not identified as persistently lowest-achieving, has an API score of less than 800, but that is subject to corrective action, if at least one-half of the parents or legal guardians of pupils attending the school, or a combination of at least one-half of the parents or legal guardians of pupils attending the school and the elementary or middle schools that normally matriculate into the middle or high school, sign a petition making the request. The LEA may choose another RTTT or NCLB intervention only if the LEA makes a written finding at a regularly scheduled public hearing as to why it cannot implement the option requested by parents, and notifies the SPI and the SBE that the option selected by the LEA has substantial promise of enabling the school to make adequate yearly progress (AYP). Also restricts this statutory requirement to the first 75 schools that inform the SPI and SBE of the final disposition of the petition.
- 3) Requires enactment of SB 1 X5 (Steinberg), pending in the Assembly, in order for this bill to be enacted.

FISCAL EFFECT: According to the Assembly Appropriations Committee:

- 1) Potential one-time General Fund/Proposition 98 (GF/98) state reimbursable mandated costs, of approximately \$425,000, to school districts to develop standards and modify or develop an option to transfer notice, as required under the Open Enrollment Act of this measure. There are 945 schools ranked in decile one of the 2008 API.

- a) Federal law requires Title 1 schools in program improvement to provide parents with an option to transfer notice. However, the information in this notice primarily provides information on transferring to a school within the district. As a result, any existing notice would need to be modified to comply with this measure, including detailing application requirements, as specified. This results in a higher level of service and may establish a state reimbursable mandated cost. Likewise, this measure requires a notice be provided to all parents with pupils enrolled in schools identified by the SPI (regardless if their pupils are enrolled in Title 1 schools or not, as required under federal law).
- 2) Potential GF/98 costs, likely between \$150,000 and \$300,000, for increased costs related to the declining enrollment adjustment. This measure establishes the Open Enrollment Act, which allows any pupil enrolled in a school identified by the SPI to transfer to a higher performing school, which may be located in a different school district. 52% of school districts in the state are experiencing declining enrollment. Existing law provides school districts with a one- year hold harmless adjustment if their enrollment is declining. For the 2007-08 fiscal year, the state provided \$318 million GF/98 for the declining enrollment adjustment.

When a pupil leaves a school district and transfers to another one, the state pays a declining enrollment adjustment to the district the pupil left. At the same time, the state also provides the school district where the pupil is now enrolled with revenue limit funding (general purpose funding) to educate the pupil. Therefore, technically, the state is paying for the pupil twice for a one-year period. This will occur for all pupils who transfer under the Open Enrollment Act.

- 3) One-time GF/98 state reimbursable mandated costs, likely less than \$150,000, to school districts to develop policies and procedures for verifying a parent petition pursuant to the Parent Empowerment program in this bill.

COMMENTS: This bill establishes an Open Enrollment and a Parent Empowerment Program that the author argues will enable the state's RTTT application to be competitive. However, the RTTT regulations do not address or award application points for either of these issues. There is another bill that more appropriately addresses the requirements for RTTT.

Open Enrollment Program: The bill creates a new open enrollment program to allow students in schools identified by the SPI to transfer to any higher performing school in the state.

The Open Enrollment proposal creates the following concerns:

- 1) The Legislature recently passed and the Governor signed SB 680 (Romero), Chapter 198 of the Statutes of 2009, which extended the state's school choice program, called Districts of Choice (DOC). Since this program authorizes any student to attend districts that choose to become DOCs, it is unclear why a new school choice program is necessary.
- 2) SB 680 created several new safeguards for the DOC program that are not included in this measure. The Assembly should consider whether it is appropriate to create a new school choice program without including the same safeguards as the DOC program, which include:
  - a) Establishing a sunset date for the program;

- b) Requiring an annual audit of the random selection process and communications to parents;
  - c) Specifying explicitly that a district of enrollment may not reject the transfer of a special needs pupil, including an individual with exceptional needs as defined in Education Code Section 56026, and an English learner;
  - d) Requiring each district of enrollment to keep records of:
    - i) the number of requests granted, denied, or withdrawn as well as the reasons for the denials;
    - ii) the number of pupils transferred out of the district;
    - iii) the number of pupils transferred into the district;
    - iv) the race, ethnicity, gender, self-reported socioeconomic status; and,
    - v) the school district of residence of each of the pupils described above;
  - e) Requiring the information listed above to be reported to the governing board of the district of enrollment and to each school district that is geographically adjacent to the district of enrollment, the county office of education in which the district is located, the SPI, and the Department of Finance;
  - f) Requiring the information listed above to be annually reported to the Legislature and the Governor; and,
  - g) Authorizing a district of residence to limit the number of students transferring out of the district under this program.
- 3) The author has indicated that the intent is to use Title 1 funds to pay for transportation for students who participate in this program. Would this mean that Title 1 funds received by the district of residence would be used to fund transportation of its students outside of the district? Title 1 eligibility is based on the students that attend schools in the district. If a Title 1 student leaves one district and enrolls in another district, those Title 1 funds follow the student to the new district. Over time, this would mean that a district of residence would be paying for the transportation of a student when it no longer receives any funding for that student. Under federal law, transportation funds only follow the student for as long as there are no high performing schools to choose from in their residential area. The same protection does not exist in this measure. The Assembly should consider whether this transportation funding arrangement is equitable.
- 4) It is unclear whether this measure requires districts to accept any transfers under this program. The program specifies that a district can create standards for accepting and rejecting students, and provides protections for discrimination against individual students, but the program may not prohibit a school district from rejecting *all* transfers under this program. For example, could a district create a policy that says they will not accept any transfers

and/or could a district create a policy that rejects all students from a specific district or school?

- 5) The program will create increased state costs related to the declining enrollment adjustment, because school districts in declining enrollment receive a one-year hold harmless adjustment. Students who transfer from a declining enrollment district to another district under this program will generate additional state costs for one year.
- 6) The measure requires the SBE to implement emergency regulations, but does not require the SBE to implement permanent regulations for this program.
- 7) This bill excludes charter schools from the list of schools identified by the SPI to participate in the open enrollment program. Of the 945 schools ranked in decile one based on the API in 2008-09, there are 103 charter schools. This means that 103 of California's lowest achieving charter schools will be excluded from the open enrollment program and an equal number of higher achieving traditional public schools will be required to participate in this program.

Parent Empowerment: In February 2009, the President signed into law the American Recovery and Reinvestment Act of 2009, which, among others, established \$4 billion for one-time State Incentive Grants known as the RTTT. One of the eligibility requirements for RTTT is identifying, including establishing a definition for, persistently lowest-achieving schools in the state and requiring these schools to implement one of four intervention models, which include closing a school, converting a school to a charter school, replacing a principal and other staff, and other requirements. These requirements are contained in another bill.

This bill establishes a process whereby parents and legal guardians at a school which is not identified as a persistently lowest-achieving school, has an API score of under 800, but that is in program improvement year 3, can require a governing board to implement any of the RTTT interventions or another intervention authorized by the NCLB if at least one-half of the parents or legal guardians of pupils attending the school, or a combination of at least one-half of the parents or legal guardians of the pupils attending the school and its elementary or middle feeder schools, sign a petition making the request.

The bill authorizes the governing board to choose an alternative RTTT or NCLB intervention only if it makes written findings of the reason it cannot implement the intervention requested by parents and guardians, and notify the SPI and the SBE how the alternative intervention it has selected has substantial promise of enabling the school to meet AYP. The provisions in this bill are similar to the provisions in earlier versions of SB 1 X5 (Romero), except that this bill includes the four RTTT models for persistently lowest-achieving schools as interventions that can be chosen by parents and guardians, in addition to the NCLB restructuring models; limits the number of affected schools to the first 75 statewide; excludes schools with an API of 800 or higher; and specifies that a LEA is not required to comply with the petition request if the reason for the request is not related to academic achievement or pupil safety.

The parameters for the petition are unclear. For example, do the families of each pupil get one signature or can all parents or guardians at a school sign the petition? If the petition is derived from a combination of a school and its feeder school(s), can the signatures from one or more feeder school comprise a majority of the petition? Is a governing board required to implement an

intervention requested by parents and guardians even if the school has recently experienced reform consistent with RTTT requirements (e.g., the principal was recently replaced)?

It is not uncommon for schools with an API of 800 or higher to fail to meet AYP because of their lack of participation in testing of special education or English learner subgroups; excluding a school that has an API of 800 or higher but is in corrective action prevents parents of these children to petition for school reform despite the overall academic achievement of the pupils at the school.

Concerns have also been raised that this proposal may cause principals to avoid making difficult or controversial school management decisions that might not be popular with parents, and that this bill does not contain protections for ensuring that there is no coercion or monetary or other incentives for parents to sign petitions. Parent advocacy organizations argue that parent education and training are critical to meaningful parent involvement. This proposal needs to be further clarified, and parent education and training components and other safeguards should be added to the bill. Lastly, similar to the Open Enrollment section, these provisions are not required by the RTTT.

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